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7 **UNITED STATES DISTRICT COURT**
8 **EASTERN DISTRICT OF WASHINGTON**

9
10 DONNA K. BUCKALEW,
11 On behalf of herself and all
12 others similarly situated
13 *Plaintiff,*

14
15 *v.*

16
17
18 SUTTELL & HAMMER,
19 P.S.
20 *Defendant.*

Case No.
Complaint for FDCPA Violations
Class Action
Demand for Jury Trial

21
22 **AMENDED CLASS-ACTION COMPLAINT**

*CONTENTS**CONTENTS***Contents**

1	Introduction	3
2	Parties	5
3	Jurisdiction and venue	7
4	Violation of the FDCPA	8
5	Cause of action	12
6	Class allegations	12
6.1	Class definition	12
6.2	Rule 23(a) prerequisites	13
6.3	Rule 23(b)(3)	16
7	Prayer for relief	19

1 INTRODUCTION

1 **1 Introduction**

2 **1.** This is a case under the Fair Debt Collection
3 Practices Act (FDCPA), 15 U.S.C. §1692 *et seq.* The
4 FDCPA provides: “A debt collector may not use any
5 false, deceptive, or misleading representation or means in
6 connection with the collection of any debt.” 15 U.S.C.
7 §1692e. The FDCPA defines a variety of specific acts
8 that constitute “false, deceptive, or misleading” debt-
9 collection practices or that otherwise violate the FDCPA.

10 **2.** Whether a letter or other communication con-
11 stitutes an unfair debt-collection practice is judged from
12 the perspective of the “least sophisticated consumer.”
13 *See Swanson v. South Oregon Credit Services, Inc.*,
14 869 F.2d 1222, 1225–26 (9th Cir. 1988). “The basic
15 purpose of the least-sophisticated-consumer standard is

1 INTRODUCTION

1 to ensure that the FDCPA protects all consumers, the
 2 gullible as well as the shrewd.” *Clomon v. Jackson*, 988
 3 F.2d 1314, 1318 (2d Cir. 1993).

4 **3.** The FDCPA provides for statutory damages
 5 of up to \$1,000 per plaintiff. *See* 15 U.S.C. §1692k(a)(2)(A).
 6 The FDCPA also specifically provides for class actions
 7 against debt collectors. “[I]n the case of a class action,
 8 (i) such amount for each named plaintiff as could be re-
 9 covered under subparagraph (A), and (ii) such amount as
 10 the court may allow for all other class members, without
 11 regard to a minimum individual recovery, not to exceed
 12 the lesser of \$500,000 or 1 per centum of the net worth
 13 of the debt collector.” 15 U.S.C. §1692k(a)(2)(B). In a
 14 class action, therefore, the statutory damages provided
 15 by the FDCPA are up to \$1,000 for each named plaintiff

2 PARTIES

1 plus a further amount up to the lesser of \$500,000 or 1%
2 of the defendant debt collector's net worth for the class
3 members other than the named plaintiff.

4 **4.** The FDCPA also permits recovery of "the
5 costs of the action, together with a reasonable attorney's
6 fee as determined by the court." 15 U.S.C. §1692k(a)(3).

7 **2 Parties**

8 **5.** Plaintiff Donna Buckalew resides and is domi-
9 ciled in Bingen, Washington. Plaintiff may be served
10 through her attorneys, Weisberg & Meyers LLC.

11 **6.** Plaintiff is a consumer as *consumer* is defined
12 in the FDCPA because she is a natural person who is
13 alleged by Defendant to be obligated to pay a debt. *See*
14 15 U.S.C. §1692a(3).

2 PARTIES

1 **7.** Defendant Suttell & Hammer P.S. is a com-
2 pany engaged in the business of attempting to collect
3 debts by mail and telephone. Defendant's principal place
4 of business is in Bellevue, Washington. Defendant may be
5 served through its registered agent, Walter J. Yund Jr.,
6 701 Fifth Avenue, Suite 550, Seattle, Washington 98104.

7 **8.** Defendant is a debt collector as *debt collector*
8 is defined in the FDCPA. This is because Defendant uses
9 the mails, the telephone system, and other instrumental-
10 ities of interstate commerce in a business, the principal
11 purpose of which is to collect debt owed to third parties.
12 *See* 15 U.S.C. §1692a(6). In this case, Defendant alleged
13 that the debt Defendant sought to collect was owed to
14 Capital One Bank (USA) N.A. The debt that Defendant
15 sought to collect is a debt as *debt* is defined in the FD-

3 JURISDICTION AND VENUE

1 CPA because it was a credit-card debt incurred for the
 2 personal use of the plaintiff. *See* 15 U.S.C. §1692a(5).

3 **3 Jurisdiction and venue**

4 **9.** This Court has subject-matter jurisdiction un-
 5 der 28 U.S.C. §1331 (federal question) and 15 U.S.C.
 6 §1692k(d) (“An action to enforce any liability created
 7 by this subchapter may be brought in any appropriate
 8 United States district court without regard to the amount
 9 in controversy”).

10 **10.** This Court has personal jurisdiction over De-
 11 fendant because Defendant’s principal place of business
 12 is located in this state; Defendant undertakes continuous
 13 and systematic business activities in the form of its debt-
 14 collection business within this state; and the specific acts

4 VIOLATION OF THE FDCA

1 that give rise to this complaint, namely, the sending and
2 receipt of Exhibits 1 and 2, took place in this state.

3 **11.** Venue is appropriate in this district under 28
4 U.S.C. §1391(b) because this is the judicial district in
5 which the plaintiff resides and received the objectionable
6 letters, and hence is a judicial district in which a sub-
7 stantial part of the events giving rise to this action took
8 place.

9 **4 Violation of the FDCA**

10 **12.** Exhibit 1 is a debt-collection letter with at-
11 tached affidavit sent by Defendant to Plaintiff and dated
12 October 27, 2009.

13 **13.** The attached affidavit bears a court caption:
14 Capital One Bank (USA), N.A., Plaintiff, v. Donna K.

4 VIOLATION OF THE FDCA

1 Buckalew, Defendant. *See* Ex. 1 at 2.

2 **14.** The affidavit refers to Capital One as ‘Plain-
3 tiff’ and Buckalew as ‘Defendant’ not only in its caption,
4 but throughout its text.

5 **15.** The affidavit also refers to a variety of legal
6 concepts expressed in legalese:

- 7 ● the affidavit refers to “business books and records”
8 kept in “the course of regularly conducted business
9 activity” and contains other language intended to
10 prove up the business-records exception to the hearsay
11 rule, Ex. 1 at 2;
- 12 ● the affidavit refers to the amount of the debt as the
13 “just and true sum” of the debt, Ex. 1 at 2;
- 14 ● the affidavit describes Buckalew’s conduct as a ‘breach[]
15 [of] the Agreement,” Ex. 1 at 2;
- 16 ● the affidavit claims that Capital One is entitled “to
17 recover from Defendant(s) reasonable attorneys’ fees
18 and costs to the extent permitted by law,” Ex. 1 at
19 3.;

4 VIOLATION OF THE FDCPA

- 1 • the affidavit states that the it is made “under penalty
2 of perjury” and the affiant avers that “if called as a
3 witness [she] would competently testify, under oath,
4 thereto,” Ex. 1 at 3; and
- 5 • the affidavit is notarized and appears over a notary’s
6 seal, Ex. 1 at 3.

7 **16.** The affidavit violates 15 U.S.C. §1692e(9).
8 Section 1692e(9) provides that it is a “false, deceptive,
9 or misleading” debt-collection practice to “use or dis-
10 tribut[e] any written communication which simulates or is
11 falsely represented to be a document authorized, issued,
12 or approved by any court, official, or agency of the United
13 States or any State, or which creates a false impression
14 as to its source, authorization, or approval.”

15 **17.** The characteristics of the affidavit described
16 in this subsection — its use of legalese, its official ap-
17 pearance, its reference to the parties as ‘plaintiff’ and

4 VIOLATION OF THE FDCA

1 ‘defendant,’ and its court-like caption — when judged
2 under the least-sophisticated-consumer standard render
3 the affidavit a written communication that simulates a
4 document authorized, issued, or approved by a court or
5 state official. The least sophisticated consumer might
6 well believe that the affidavit is an official court docu-
7 ment, which it is not. For these reasons, sending the
8 affidavit was, without limitation, a violation of §1692e,
9 §1692e(10), and §1692e(9).

10 **18.** The affidavit is also misleading in that, be-
11 cause it appears to come from an ongoing court case, it
12 contradicts the cover letter, which states that “[a]t this
13 time suit has not been initiated.” In addition to violating
14 §1692e, §1692e(10), and §1692e(9), this violates 15 U.S.C.
15 §1692e(2)(A), which prohibits false representations about

6 CLASS ALLEGATIONS

1 the “legal status of any debt.” *See Johnson v. Eaton*,
2 873 F. Supp. 1019, 1026 (M.D. La. 1995).

3 **5 Cause of action**

4 **19.** Plaintiff’s sole cause of action is for viola-
5 tion of the above-cited provisions of the FDCPA. *See*
6 15 U.S.C. §1692k (“civil liability”). The facts alleged in
7 this complaint satisfy the elements of a cause of action
8 under this section.

9 **6 Class allegations**10 **6.1 Class definition**

11 **20.** Plaintiff seeks to prosecute this case as a class
12 action on behalf of a class defined as follows:

13 All natural persons with addresses located in
14 the Ninth Circuit who, within one year before

6.2 *Rule 23(a) prerequisites*6 *CLASS ALLEGATIONS*

1 the date of this complaint, received an affidavit
 2 from Defendant in connection with an attempt
 3 to collect a debt, where the debt was incurred
 4 for personal, family, or household reasons and
 5 the Defendant was collecting the debt on behalf
 6 of a third party, and where the affidavit con-
 7 tains statements or formatting including appear-
 8 ing under a court caption, referring to the credi-
 9 tor as ‘plaintiff’ and the recipient as ‘defendant,’
 10 using legalese and referring to legal terms, and
 11 appearing over the official seal of a notary that
 12 suggest that the affidavit is an official court doc-
 13 ument or that a legal proceeding is underway
 14 when that is false.

15 **6.2 Rule 23(a) prerequisites**

16 **21. Numerosity.** This is a letter case. All
 17 debtors or alleged debtors who received letters like Ex-
 18 hibit 1 have exactly the same claim as the named plaintiff.
 19 Because Defendant is in the business of collecting debt
 20 and these letters appear to be form letters, the group of

6.2 Rule 23(a) prerequisites

6 CLASS ALLEGATIONS

1 recipients of letters like Exhibit 1 is sufficiently numerous
2 that it would be more efficient to address the claims of
3 that group through a class action than through a multi-
4 plicity of individual actions.

22. Common questions of fact and law.

5
6 The questions of fact and law are entirely common. The
7 only question of fact is whether the debtors or alleged
8 debtors received letters like Exhibit 1 and whether the
9 Defendant sent those letters. This question of fact can
10 be proved up by class members submitting the letters
11 they received when they file their claims. The questions
12 of law are whether the statements in Exhibit 1 violate
13 the FDCPA as alleged in this complaint. That is, the
14 only questions of law are exactly the same for others who
15 received letters like Exhibit 1 as they are for the named

6.2 Rule 23(a) prerequisites

6 CLASS ALLEGATIONS

1 plaintiff. Whether a debt collector's letter violates the
 2 FDCPA is a legal question to be resolved by the court.
 3 *See Terran v. Kaplan*, 109 F.3d 1428, 1432 (9th Cir.
 4 1997). "In the 9th Circuit, the court—and not the jury—
 5 determines whether a particular collection letter violates
 6 the FDCPA." *Anderson v. Credit Collection Services,*
 7 *Inc.*, 322 F.Supp. 2d 1094, 1096 (S.D. Cal. 2004) (*citing*
 8 *Swanson v. Southern Oregon Credit Services, Inc.*, 869
 9 F.2d 1222, 1225-26 (9th Cir. 1988) and *Terran v. Ka-*
 10 *plan*, 109 F.3d 1428.

11 **23. Typicality.** The named plaintiff is entirely
 12 typical of the class. She received the letter in Exhibit
 13 1. Because the only issue is whether the statements in
 14 that letter violate the FDCPA, the plaintiff is typical of
 15 the class in the only relevant respect: she received the

6.3 Rule 23(b)(3)

6 CLASS ALLEGATIONS

1 allegedly unlawful letters.

2 **24. Adequacy of representation.** The named
 3 plaintiff is an adequate class representative. She has
 4 chosen to vigorously pursue her claims. And she has
 5 engaged qualified class counsel specializing in consumer
 6 law that has prosecuted literally thousands of FDCPA
 7 cases around the country, and counsel specializing in com-
 8 plex commercial litigation that regularly handles sophis-
 9 ticated, bet-the-company commercial cases around the
 10 country. Counsel have experience prosecuting and de-
 11 fending federal class actions.

12 **6.3 Rule 23(b)(3)**

13 **25.** This class should be certified under Rule 23(b)(3).

14 **26.** The common questions of law and fact pre-
 15 dominate in this case because the only questions are com-

6.3 Rule 23(b)(3)

6 CLASS ALLEGATIONS

1 mon: whether letters like Exhibit 1 were sent and received
2 and whether the statements in those letters identified in
3 this complaint violate the provisions of the FDCPA iden-
4 tified in this complaint. There are no other questions of
5 law or fact. Thus, the common questions predominate.

6 **27.** The class members have no substantial inter-
7 est in controlling the prosecution of this case individually.
8 The questions are entirely common and the legal strategy
9 with respect to those questions is clear. The principal ar-
10 guments have already been spelled out in this complaint.
11 They are straightforward. And, in a class action, the
12 plaintiffs will have the services of counsel familiar with
13 complex litigation who would not have adequate incen-
14 tive to handle these cases on an individual basis.

15 **28.** There does not appear to be substantial pre-

6.3 Rule 23(b)(3)

6 CLASS ALLEGATIONS

1 existing litigation about these issues.

2 **29.** There is no reason why concentrating litiga-
3 tion in this forum would be undesirable. This forum is
4 convenient for Defendant, which has its principal office in
5 Bellevue, Washington, and which does substantial busi-
6 ness in this district, including attempting to collect the
7 debt that is the subject of the named plaintiff's claim.

8 **30.** No special difficulties are posed in managing
9 this class action. The law involved is entirely federal,
10 so there are no choice-of-law issues to concern the court.
11 And, because the claims are based entirely on documen-
12 tary evidence — letters like Exhibit 1 — the evidence in
13 the class action will be no more difficult to handle than
14 it would be in individual cases.

7 *PRAYER FOR RELIEF*

1 **7 Prayer for relief**

2 **31.** Plaintiff demands trial by jury on all issues.

3 **32.** Plaintiff prays for relief as follows:

- 4 ● class certification as described in §6;
- 5 ● appointment of the named plaintiff's counsel as lead
6 class counsel;
- 7 ● statutory damages, costs, and attorneys' fees as pro-
8 vided for in 15 U.S.C. §1692k;
- 9 ● pre- and post-judgment interest; and
- 10 ● all other relief to which she is entitled in equity or at
11 law.

7 PRAYER FOR RELIEF

DATED: March 4, 2010.

Respectfully submitted,

/s/ Jon N. Robbins

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